IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 403 OF 2001.

M/s.Petals Engineers Pvt. Ltd.,
through its General Manager,
Shri Prabhakar V. Mallya,
having office at Plot No. 237-238,
Kundaim Industrial Estate,
Kundaim-Goa. ... Petitioner.

Versus

Shri Pradip Haldankar,
represented by M/s. Petals
Engineers Pvt. Ltd. Employees
Union, 716, Betim, Goa. ... Respondent.

Mr. M.S. Sonak, Advocate for the Petitioner.

Mr. G. Naik, advocate for the Respondent.

Coram: P.V. HARDAS, J.

Date: 3rd October 2002.

ORAL JUDGMENT.

Rule. By consent of parties, this Writ Petition is heard finally at the stage of admission.

2. This petition is filed against the Order dated 9th October 2001 passed by the Presiding Officer, Industrial Tribunal at Panaji, Goa. By the said Order, the learned Presiding Officer of the Industrial Tribunal dismissed the application dated 19th February 2001, Exhibit 1, filed by the present petitioner for setting aside the ex parte Award and restoring the reference No. IT/90/99 on board.

3. The brief facts necessary for the decision of

the petition are set out hereunder:-

On 31st January 2000, since the petitioner was not represented before the Industrial Tribunal, the Industrial Tribunal proceeded ex parte against the present petitioner and recorded the ex parte evidence of the respondent. After recording the evidence of the respondent, the Tribunal passed an Award dated 29th December 2000 holding that the discontinuing of the respondent was as a result of the termination of his services by the present petitioner and not abandonment of his services by the respondent. The Tribunal further held that the termination of the services of the respondent by the petitioner with effect from 9th November 1994 was illegal and unjustified and the respondent was ordered to be reinstated in services with full back wages and continuity in service. It is in this backdrop that the present petitioner filed an application dated 19th February 2001, at Exhibit 1, for setting aside the Award and restoring the said reference on board.

4. In the application for restoration, the petitioner had averred that Advocate Girish Sardessai had filed his wakalatnama on behalf of the petitioner and was attending the case before the Tribunal. It appears that on 9th December 1999, since the counsel for

the petitioner had not received any instructions, he sought an adjournment as he wanted to withdraw his appearance from the case. The matter was then adjourned to 7th January 2000 and again adjourned to 31st January 2000. On that date advocate Sardessai, who was the counsel representing the petitioner, filed copy of the notice dated 12th January 2000 sent to the petitioner and also filed an acknowledgement evidencing receipt of the said notice. On that date, therefore, the learned tribunal permitted advocate Sardessai to withdraw his appearance from the case. Since the petitioner had not engaged any other counsel to represent it, the matter proceeded ex parte against the petitioner and the evidence of the respondent was recorded and ultimately the Award came to be passed on 29th December 2000. In the application for setting aside the ex parte Award it is averred that the notice issued by advocate Sardessai was received by one Miss Shoba Tulsidas Mulvi, who was then working at the reception. Despite receipt of the letter/notice the said Miss Mulvi did not apprise the officials of the petitioner and, hence, no action could be taken by the petitioner in connection with the notice sent by advocate Sardessai. Alongwith the application, the petitioner also filed the affidavit of Miss Mulvi. In the affidavit it is stated that she had left the employment of the petitioner on 1st November 2000. In the affidavit it is further stated that she had received

the letter on or about 16th January 2000 and after receipt of the said letter she misplaced the said letter and thereafter completely forgot about the said letter and lost sight of it, otherwise she would have sent it to the Director at Mumbai. She has also stated on oath that she had not shown the said letter to any person including Mr. Francis Mathew Pinto, the Assistant Manager of the petitioner. She states that the said Francis Mathew Pinto came to her house in the first week of February 2001 and inquired with her about the registered letter received from advocate Sardessai.

5. The learned Tribunal, while considering the application of the petitioner, has held that the affidavit of Miss Mulvi cannot be relied upon as she states to have received the letter from Mr. Sardessai on or about 16th January 2000 whereas in fact the record disclosed that though the letter of advocate Sardessai is dated 12th January 2000, the said letter was, in fact, posted on 19th January 2000. The affidavits of Francis Pinto and Miss Mulvi were, therefore, held by the learned Tribunal to be contrary to the records. The learned Tribunal also held that Miss Mulvi had probably filed the affidavit only to please the petitioner because at one time she was working with the petitioner.

6. The petitioner at Exhibit 'N' has produced an

Order passed by the learned Presiding Officer of the Industrial Tribunal in which the learned Industrial Tribunal had accepted the explanation of Miss Mulvi that she had misplaced the letter of advocate Sardessai. This ofcourse was in respect of a different matter. Probably the only distinguishable feature is that in the present case Miss Mulvi stated that she had received the notice from Mr. Sardessai on or about 16th January 2000 whereas Mr. Sardessai had posted the said notice on 19th January 2000.

7. Mr. Sonak, the learned counsel appearing for the petitioner, has urged before me that Miss Mulvi was deposing about the date of receipt of the notice from memory. She had sworn the affidavit more than a year after she had received the letter from advocate Sardessai. This is a genuine mistake of stating the wrong date of receipt of letter but, according to him, the fact remains that Miss Mulvi on oath stated that the letter received from Mr. Sardessai had been misplaced by her and the petitioner was not aware about the receipt of such a letter issued by advocate Sardessai.

8. Mr. Naik, appearing on behalf of the respondent, has urged before me that deliberately a false statement had been made and it was obvious that Miss Mulvi had sworn the affidavit in order to oblige

the petitioner. According to him, therefore, the petition has no merit and deserves to be dismissed.

9. It is true that the affidavit of Miss Mulvi states that she had received the letter dated 12th January 2000 on or about 16th January 2000. It is also true that this statement is factually incorrect as the said letter was posted by advocate Sardessai on 19th January 2000. The question is whether the statement of receipt of the letter on 16th January 2000 is incorrect/false and has been made to oblige the petitioner. Undeniably the said letter was received in the office of the petitioner. Since Miss Mulvi, at the relevant time, was working at the reception, her statement can be accepted that she had received the letter. Undisputedly, Miss Mulvi had sworn the affidavit more than a year after the date of receipt of the letter. She was deposing about the date of receipt of the letter obviously from her memory. The record does not disclose that the letter had been received by some one other than Miss Mulvi. Had the record so disclosed, then obviously the statement of Miss Mulvi that she had received the letter on 16th January 2000 would be a false statement. Regardless of the error in mentioning about the date of the receipt of the letter, she has stated that she had received the letter on or about 16th January 2000. According to me, this is a clear case of an error in stating the date of receipt of

the letter because she was obviously deposing about the said date on the basis of her memory. Therefore, according to me, on the basis of a small error it cannot be said that she has sworn a false affidavit or that the explanation sought to be given by the petitioner is a false explanation. The learned Tribunal in an earlier proceeding had accepted the said explanation as sufficient cause for setting aside the ex parte Award. Be that as it may, according to me, the error in stating the date of receipt of the letter would not falsify the rest of the contents of the affidavit that she had misplaced the letter and she had not informed the petitioner. Therefore, according to me, sufficient explanation has been offered by the petitioner as to why it was unable to appoint some other counsel to represent it in the reference before the Tribunal. It cannot be said that the petitioner was grossly negligent. The Order impugned in the present petition dated 9th October 2001, therefore, is unsustainable and will have to be quashed and set aside.

10. The impugned Order dated 9th October 2001 at Exhibit 'M' is hereby quashed and set aside and the application dated 19th February 2001, Exhibit 1, for restoring the reference on board is, hereby, allowed with costs of Rs. 3,000/-. The petitioner to deposit the costs in the Tribunal. On such deposit, the

respondent shall be entitled to withdraw the said costs. The learned Tribunal to afford an opportunity to the present petitioner to lead evidence in support of its case, The Tribunal to decide the reference on merits within 3 months of the receipt of the writ of this Court.

11. The Writ Petition is, accordingly, allowed. Rule is made absolute in the above terms.

(P.V. HARDAS)
JUDGE.

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